IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5859 OF 2007

Rowena Natasha D'souza.... Petitioner

versus

Ralph luis D'souza ..... Respondent.

Mr.D.U. Mirajkar i/b Ms.Alfpa Javeri forthe petitioner.
Mr. Clive D'souza forthe respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is the respondent wife in a marriage Petition filed by the husband for divorce under section 10 of the Indian Divorce Act. One of the issues raised in the written statement after the same was permitted to be amended was in regard to joint ownership of a flat/apartment at A-2/207 Lok Gaurav, LBS Marg, Vikrholi West, Bombay. The case of the present petitioner as pleaded in the amended written statement which has been titled as an 'affidavit-in-reply of the respondent in reply to the divorce petition' is that the flat/apartment is

jointly owned by the parties and it is purchased in the joint names. The learned counsel for the respondent does not dispute about the plea being raised in the amended written statement about the residential flat/apartment having been purchased in joint name of the petitioner and the respondent. Both the learned advocates appearing for the respective parties are in agreement that the petitioner could be permitted to cross examine the husband touching the question of joint ownership of the flat which has been disallowed by the Family Court by holding that, there is no amendment carried out in the written statement at Exh.12. What has infact happened is that the present petitioner filed written statement, but titled the same as affidavit-in-reply and thereafter filed yet another written statement to the petition, which has caused the confusion. As now it is not in dispute that the petitioner has raised a plea of joint ownership of the matriminoial home, the petitioner shall be permitted to cross examine the husband touching the said question. As this order is being passed on consession made available by the learned advocates appearing for both the parties, I do not record the reasons. In the result, the writ petition is partly allowed. The impugned orders passed by the Family Court dated 20-7-2007 and 23-7-007 are quashed and set aside. The petitioner is permitted to cross

examine the husband touching the question of joint ownership of the matrimonial house and no other ground. Rule made absolute in the above terms.

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